

EXHIBIT 70

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a
Korean business entity; SAMSUNG
ELECTRONICS AMERICA, INC., a New York
corporation; SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC, a
Delaware limited liability company,

Defendants.

Case No. 11-cv-01846-LHK

**EXPERT REPORT OF HAL PORET
IN MATTER OF APPLE INC. V.
SAMSUNG ELECTRONICS CO.,
LTD. ET AL.**

**SURVEY TO MEASURE WHETHER
THE TRADE DRESS OF THE
iPHONE AND iPad HAVE
ACQUIRED SECONDARY
MEANING**

1 41. These Controls enabled the survey to measure the noise level for each of the Test
2 Cells – i.e., the tendency to generally associate the concept or functionality of tablet computers
3 with Apple or to name Apple for any other reasons aside from recognition of the specific iPad
4 trade dress. Accordingly, any difference between the Test and Control Cell results cannot be
5 attributed to the survey questions, the functionality of the iPad, general associations of tablet
6 computers with Apple or other forms of survey noise.

7 **IV. SUMMARY OF KEY FINDINGS**

8 **A. IPHONE SURVEY**

9 42. The survey data was analyzed based on each of two universes. First, the data was
10 analyzed based on the proper universe for assessing secondary meaning, defined as consumers
11 who have purchased a mobile phone in the past 12 months or are likely to do so in the next 12
12 months (314 Test Cell respondents and 164 Control cell respondents). In order to get a sense of
13 the level of recognition of the iPhone trade dress among a broader set of consumers, the data was
14 also analyzed among all respondents (582 Test Cell and 299 Control Cell), which includes both
15 the universe for secondary meaning and additional respondents who do not meet the above
16 criteria but who own a mobile phone that they purchased more than a year ago or that was
17 purchased for them.

18 43. Within the core secondary meaning universe of consumers who have purchased a
19 mobile phone in the past 12 months or are likely to do so in the next 12 months, the Test Cells
20 secondary meaning level was in the range of 64.3% to 70.4%. In the Control Cells, the noise
21 level was in the range of 3.7% to 6.7%. Accordingly, the net secondary meaning level was in the
22 range of 60.6% to 63.7%. These results demonstrate that the iPhone Trade Dress has acquired
23 secondary meaning. Among all respondents in the Test Cells, the rate of single source association
24 was in the range of 54.5% to 61.5% and a total of 69.6% gave answers indicating awareness or
25 recognition of the iPhone trade dress. In the Control Cells, the rate of single source association
26 was in the range of 4.3% to 7.0% and a total of 10.4% mentioned Apple or the iPhone.
27 Accordingly, the net rate of awareness or recognition of the iPhone Trade dress was 59.2%.

1 **B. iPAD SURVEY**

2 44. The survey data was analyzed separately for the Cells where the image shown
3 consisted of a head-on view of the iPad (or control) and the Cells where the image shown
4 consisted of an angled view of the iPad 2 (or control) with the button visible at the bottom of the
5 tablet. Within the former (head-on) Cells, the universe consisted only of those who had
6 purchased a tablet computer in the past 12 months or were likely to purchase one in the next 12
7 months or currently owned a tablet. Within the latter (angled) Cells, the data was also analyzed
8 based on two universes: (a) the relevant universe for secondary meaning — consumers who have
9 purchased a tablet computer in the past 12 months or are likely to do so in the next 12 months;
10 and (b) all respondents (including the additional respondents who do not meet the above criteria
11 but have purchased a mobile phone or notebook computer in the past 12 months or were likely to
12 do so in the next 12 months.)

- 13 1) For Cells 1 and 2 (head-on view of iPad), the secondary meaning level was in the range of
14 55% to 57.3%. In the corresponding Control Cell (Cell 3), the noise level was 17%.
15 Accordingly, the net secondary meaning level was in the range of 38% to 40.3%.
- 16 2) For Cells 4 and 5 (angled view of iPad), within the secondary meaning universe
17 (consumers who have purchased a tablet computer in the past 12 months or were likely to
18 do so in the next 12 months), the Test Cells secondary meaning level was in the range of
19 74.3% to 75.2%. In the corresponding Control Cells (Cells 6 and 7), the noise level was
20 in the range of 9.9% to 10.8%. Accordingly, the net secondary meaning level was 64.4%.
- 21 3) The results for both sets of Cells (viewed either separately or together) demonstrate that
22 the iPad Trade Dress has acquired secondary meaning.
- 23 4) Among all respondents in Cells 4 and 5, the rate of single source association was in the
24 range of 70.5% to 71.2%. In the corresponding Control Cells (Cells 6 and 7), the noise
25 level was in the range of 11.2% to 11.5%. Accordingly, the net result for single source
26 association was in the range of 59.3% to 59.7%.

1 See Detailed Findings section below for additional information on results. The full data will be
2 provided in electronic form.²²

3 **V. METHODOLOGY**

4 **A. THE RELEVANT UNIVERSE OF INTEREST**

5 **1. iPhone SURVEY**

6 45. The relevant universe for the iPhone survey was defined to be actual and
7 prospective purchasers of mobile phones age 16 or older. The specific screening questions used
8 to sample among the relevant universe asked respondents which, if any, of a variety of devices
9 (presented in rotated order) they currently own, have purchased in the past twelve months, or are
10 likely to purchase in the next twelve months. The following answer choices were given:

- 11 1. Gaming system
- 12 2. Digital camera
- 13 3. Desktop computer
- 14 4. Notebook computer
- 15 5. Tablet computer
- 16 6. MP3 player
- 17 7. Mobile phone (including smartphones)
- 18 8. Microwave oven

19 46. Respondents who indicated they have purchased a mobile phone (including
20 smartphones) in the past 12 months or are likely to purchase a mobile phone in the next 12
21 months were considered the core relevant universe for secondary meaning and qualified to take
22 the survey. Although the typical standard is to accept only reasonably recent and likely future
23 purchasers, the survey also accepted respondents who currently own a mobile phone, even if it
24 was not one that they purchased within the past 12 months. Such respondents were permitted to
25 take the survey to get a sense of the awareness/recognition level of the iPhone among a broader
26 set of consumers than the secondary meaning universe.

27 47. In sum, the relevant universe for secondary meaning was defined as those who
28 have purchased a mobile phone in the past 12 months or are likely to purchase a mobile phone in

22 A column has been added to the Excel sheet containing the data which shows how each respondent was coded. A key is also provided explaining the codes. A blank in the "Code" column means no answer was given indicating any association with Apple.